U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-C-D-A-B-

DATE: NOV. 27, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a legal analyst and consultant, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and contends that he is eligible for a national interest waiver under the *Dhanasar* framework. He asserts that his documentation meets the preponderance of the evidence standard of proof. A petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification

requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.[1] *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

II. ANALYSIS

The record reflects that the Petitoner qualifies as a member of the professions holding an advanced degree.[3] The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner indicates that he intends to continue his "career as a Legal Analyst and Consultant in the corporate field."[4] He further states: "I can assist law firms or companies in reviewing and drafting various legal documents, including contracts, litigation filings, discovery material, legal memos and other documents that relate to a particular transaction or court case throughout Latin America and the Caribbean." Since September 2017, the Petitioner has worked as associate general counsel for [redacted] a company that provides customer experience solutions.[5] He notes that his "responsibilities include preparing and controlling the legal department's budget, managing lawsuits, managing the different law firms, structuring the legal department throughout Latin America and the Caribbean, and managing the legal matters in the business operations." In addition, the record includes a letter from [redacted] chief legal officer, stating:

> Reporting directly to me, [the Petitioner] is in charge of legal matters in nine different countries: Antigua, Brazil, Uruguay, Dominican Republic, Panama, Honduras, Guatemala, Mexico, and Jamaica. He handles all areas including litigation, intellectual property, corporate, immigration and labor/employment. . . . He

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[3] The Petitioner provided evidence that he received a "Master of Laws" degree in international law from [redacted] (2016).

[4] The Petitioner asserts that he is "eligible to seat [*sic*] for the Bar Exam in the United States" and that he plans "to become a licensed attorney in the U.S."

[5] As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we consider information about his position with [redacted] to illustrate the capacity in which he intends to work.

> successfully works with local management teams, regional leaders and corporate representatives as part of his work on behalf of .

Furthermore, president of Latin America and Caribbean operations, asserts that the Petitioner "has been handling the legal in all countries that we operate, and he has also been helping me to prospect new opportunities in new countries. . . . He supports with tax, immigration, corporate, litigation, business opportunities among others. His experience helps to mitigate risks, and also to increase its profits." We find that the Petitioner's proposed endeavor to continue his work as a legal analyst and consultant, which serves the business interests of his employer and its clients, has substantial merit.

With respect to the national importance of the proposed endeavor, the Petitioner contends that he will assist "companies doing business or planning on doing business in Brazil, Latin America and other regions, helping to navigate the complex laws and regulations that they will face when making the move into this new market, or when trying to optimize their operations." In addition, he indicates that he will work with U.S. "firms and organizations that are in need of legal analysts or consultants to help them to develop their strategies in compliant [*sic*] with the different legislations, along with providing complex legal advice and guidance regarding cross-border transactions relating to corporate law." The Petitioner further states that his proposed "endeavor can result in a contribution to the U.S. economy, and employment of U.S. workers."

The record includes articles discussing approaches for U.S. and foreign lawyers to improve opinion practice in cross-border transactions, the significance of commercial negotiation skills in the modern business environment, advantages of multinational organizations, the value of foreign direct investment in the United States, the benefits of U.S. corporate investment abroad, and the favorable industry economic outlook for U.S. law firms domestically and internationally. The Director determined that these articles and the information the Petitioner provided about his proposed endeavor were not sufficient to demonstrate its national importance. Specifically, the Director found that the Petitioner had not shown that his proposed work as a legal analyst and consultant has implications beyond his employer and its clients "at a level sufficient to demonstrate the national importance of his endeavor."

On appeal, the Petitioner asserts that "as Associate General Counsel at he has sole responsibility of a $1,000,000.00 . . . budget that covers all of legal operations in nine different countries throughout Latin [America] and the Caribbean; more than 20 different local law firms under his responsibility; approximately 20 different work sites; and approximately 300 law suits." He maintains that "his proposed work (i.e., legal and business analysis and consultancy to U.S. businesses in cross-border transactions, doing business, exporting goods, or planning to do business with Brazil) has substantial implications of national importance." In addition, he contends that his proposed endeavor has national importance "because it enhances business and entrepreneurialism, involving the development of major intercontinental business operations that can directly generate positive economic impacts to the economy of the United States." The Petitioner further explains that

"[w]hen U.S. companies export more to Brazil, they produce more goods and services, and usually hire more workers in the United States."

The appellate submission includes a report from the U.S. Trade Promotion Coordinating Committee entitled "Helping U.S. Businesses Increase Global Sales to Support Local Jobs – National Export Strategy 2016." This report outlines the potential for American companies "to capitalize on opportunities to sell their goods and services worldwide and thereby support job creation across the United States." In addition, the Petitioner offers information relating to U.S. and Brazilian trade and investment matters, including statistics for exports, imports, trade balances, and investments. His documentation includes an article in *Lawyer Monthly* entitled "Why You Should Open a Business in Brazil." The record also contains material from the U.S. International Trade Administration's *Brazil Country Commercial Guide* providing an overview, identifying opportunities, and recommending an entry strategy for U.S. exporters interested in the Brazilian market. Finally, he submits articles discussing lawyer shortages in Middle America and Washington State[6], and why the legal industry should embrace diversity. While these documents relating to U.S. trade, business opportunities in Brazil, lawyer shortages, and the importance of diversity help show the merit of the Petitioner's proposed work, they are not sufficient to demonstrate the national importance of any particular legal consulting work proposed by the Petitioner.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. Although the information from [redacted] executives and statements from the Petitioner reflect his intention to provide valuable legal services to his employer and its prospective business clients, he has not offered sufficient evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because the effects of the work are primarily limited to the teacher's school or district[7], we find that the Petitioner has not shown his

[6] The record does not indicate that the Petitioner intends to practice law in Middle America or Washington State. Furthermore, regional shortages of lawyers in the United States do not render the work of an individual attorney nationally important under the *Dhanasar* framework. We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States.

[7] *See Id.* at 893.

proposed endeavor in this case will sufficiently extend beyond his employer and its clients to impact the industry more broadly than his specific legal consulting projects. Nor has he shown that his particular work for [redacted] would have broader implications for the field of law.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While the appeal brief alludes to possible increases in U.S. exports and potential job creation resulting from projects he will pursue on behalf of [redacted] and its clients, the record does not include sufficient evidence regarding any projected U.S. export growth or job creation attributable to his specific legal analysis and consulting work. The record does not show that benefits to the regional or national economy resulting from the Petitioner's projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of C-C-D-A-B-*, ID# 1772640 (AAO Nov. 27, 2018)